

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Atty. Docket No.: 005127.00179
Derek CAMPBELL et al.	
Confirmation No.: 3120	
Application No.: 10/700,043	Group Art Unit: 3781
Filed: November 4, 2003	Examiner: Mai, Tri M.
For: GOLF BAG BASE	

RESPONSE TO NON-COMPLIANT APPEAL BRIEF

U.S. Patent and Trademark Office
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401 Dulany Street
Alexandria, VA 22314

Sir:

In response to the Notification of Non-Compliant Appeal Brief mailed April 7, 2010, Applicants hereby submit a replacement Appeal Brief citing support for the independent claims in the Specification, rather than the Patent Publication. It is believed that this submission is in compliance with 37 CFR 41.37 and that no fee is due for this submission. However, if any fee is due, or if an overpayment has been made, the Director is authorized to debit or credit Deposit Account No. 19-0733 accordingly.

Respectfully submitted,

/Elizabeth A. Almeter/
Elizabeth A. Almeter
Registration No. 57,019

Customer No. 22907

Dated: May 6, 2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Atty. Docket No.:	005127.00179	
Derek CAMPBELL et al.			
Confirmation No.:	3120		
Application No.:	10/700,043	Group Art Unit:	3781
Filed:	November 4, 2003	Examiner:	Mai, Tri M.
For:	GOLF BAG BASE		

APPEAL BRIEF

U.S. Patent and Trademark Office
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Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This is an Appeal Brief filed in support of Appellants' Notice of Appeal filed January 15, 2010. Appeal is taken from the Final Office Action mailed October 15, 2009 (hereafter, "Final Office Action").

Please charge any fees to Deposit Account No. 19-0733. In addition, any extensions of time necessary for acceptance or entry of this paper are hereby requested.

REAL PARTY IN INTEREST

37 C.F.R. § 41.37(c)(1)(i)

The owner of this application, and the real party in interest, is NIKE, Inc.

RELATED APPEALS AND INTERFERENCES

37 C.F.R. § 41.37(c)(1)(ii)

There are no related appeals or interferences.

STATUS OF CLAIMS

37 C.F.R. § 41.37(c)(1)(iii)

Claims 1, 2, 4-38, and 40-55 are rejected and presently appealed. Claims 3, 39, and 61-67 have been cancelled without prejudice or disclaimer. Claims 56-60 and 68-76 have been withdrawn from consideration.

STATUS OF AMENDMENTS

37 C.F.R. § 41.37(c)(1)(iv)

No amendments have been made subsequent to final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

37 C.F.R. § 41.37(c)(1)(v)

In making reference herein to various embodiments in the specification text and/or drawings to explain the claimed invention, Appellants do not intend to limit the claims to those embodiments; all references to the specification and drawings are illustrative unless otherwise explicitly stated. Appellants refer to the originally filed Specification for the cited support.

Independent claim 1 is directed to a golf bag. Specification, Abstract, paras. [01], ll. 1-5, [05], ll. 1-5, [29]-[33], FIGS. 1-4, element 10. The golf bag includes a substantially hollow body with a first end for receiving golf equipment and an opposite second end. *Id.* at para. [30], ll. 1-7, FIGS. 1-4, element 10. The golf bag further includes a base secured to the second end of the body. *Id.* at para. [34], l. 4 - [37], l. 8, FIGS. 1-4, element 40. The base is formed of a single piece element that extends substantially around the second end of the body and forms a support surface for contacting a ground. *Id.* at paras. [37], l. 1 - [39], l. 13. The base defines a flexion

line, a first portion of the base being pivotable with respect to a second portion of the base about the flexion line. *Id.* at paras. [06], ll. 1-2, [39], ll. 10-11.

Independent claim 20 is directed to a golf bag configurable to stand in an upright position or an inclined position. *Id.* at paras. [01], ll. 1-5, [05], ll. 1-5, [29]-[32], [34], ll. 1-14, [35], ll. 1-14, FIGS. 1-4, element 10. The golf bag comprising a substantially hollow body with a first end for receiving golf equipment and an opposite second end. *Id.* at paras. [30], ll. 1-7, FIGS. 1-4, element 10. The golf bag further including a base secured to the second end of the body, the base formed of a single piece element that extends substantially around the second end of the body and forms a support surface for contacting a ground. *Id.* at paras. [34], l. 4 - [39], l. 13, FIGS. 1-4, element 40. The base is formed of a flexible material such that a first portion of the base is pivotable with respect to a second portion of the base. *Id.* at paras. [06], ll. 1-6, [36], ll. 1-6, [37], ll. 1-7, [38], ll. 10-15, [39], ll. 1-12. The golf bag further including a support assembly secured to the body and the base, the support assembly including a pair of legs for supporting the golf bag in the inclined position. *Id.* at paras. [32], l. 7 - [34], l. 14, FIGS. 1-4, elements 30, 31.

Independent claim 38 is directed to a golf bag. *Id.* at paras. [01], ll. 1-5, [05], ll. 1-5, [29]-[33], FIGS. 1-4, element 10. The golf bag comprising a substantially hollow body with a first end for receiving golf equipment and an opposite second end. *Id.* at para. [30], ll. 1-7, FIGS. 1-4, element 10. The golf bag further including a base secured to the second end of the body. *Id.* at para. [34], l. 4 - [37], l. 8, FIGS. 1-4, element 40. The base is formed of a single piece element that extends substantially around the second end of the body and forms a support surface for contacting a ground. *Id.* at paras. [37], l. 1 - [39], l. 13, FIGS. 1-4, element 40. The base is formed of a flexible polymer foam material and a first portion of the base is pivotable with respect to a second portion of the base about a flexion line. *Id.* at paras. [06], ll. 1-6, [36], ll. 1-6, [37], ll. 1-7, [38], ll. 10-15, [39], ll. 1-12.

Independent claim 48 is directed to a golf bag. *Id.* at paras. [01], ll. 1-5, [05], ll. 1-5, [29]-[33], FIGS. 1-4, element 10. The golf bag comprises a substantially hollow body for receiving golf equipment. *Id.* at para. [30], ll. 1-7. The golf bag further includes a base secured to an end of the body. *Id.* at paras. [34]-[37]. The base further includes a foam element formed of a polymer foam material. *Id.* at paras. [38], ll. 1-18, [41], ll. 1-13. The base has at least a first wear element and a second wear element secured to an exterior surface of the foam element. *Id.* at

paras. [07], ll. 1-5, [48], l. 6 - [50], l. 10. The first wear element has a first configuration and the second wear element has a second configuration different from the first configuration. *Id.* at para. [49], ll. 1-15, FIGS. 12, 13, elements 70a' and 70b'. At least one of the first and second wear elements is configured to contact a ground. *Id.* at para. [48], ll. 11-13, [49], ll. 8-11.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

37 C.F.R. § 41.37(c)(1)(vi)

- Claims 1, 4-11, 15, 16, 20-28, 33, 34, and 36 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,938,762 to Cheng (hereinafter “Cheng ‘762”).
- Claims 1, 6, 8-11, 15, 16, 18, 20-25, 33, and 34 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,386,362 to Cheng (hereinafter “Cheng ‘362”).
- Claims 1, 4-11, 15, 16, 18, 20-28, 33, 34, and 36 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,568,527 to Te-Pin (hereinafter “Te-Pin”).
- Claims 2, 29, 30, 38, 40-43, 46 and 47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng ‘762, Cheng ‘362, or Te-Pin in view of U.S. Patent Publication No. 2004/0200746 to Kang (hereinafter “Kang”).
- Claims 12-14, 31, 32, 35-37, 44, and 45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng ‘762, Cheng ‘362, or Te-Pin in view of U.S. Patent No. 6,298,988 to Wen-Chien (hereinafter “Wen-Chien”).
- Claims 17-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng ‘762, Cheng ‘362, or Te-Pin in view of U.S. Patent No. 6,736,264 to Yoshida (hereinafter “Yoshida”).
- Claims 48-55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cheng ‘762, Cheng ‘362, or Te-Pin in view of Kang and Wen Chien.

ARGUMENT

37 C.F.R. § 41.37(c)(1)(vii)

A. Rejection of Claims 1, 4-11, 15, 16, 20-28, 33, 34 and 36 Based on Cheng '762

1. Independent Claims 1, 20, and 38

Appellants respectfully submit that Cheng '762 is not valid prior art against the recited claims. The filing date of the Cheng '762 reference is May 28, 2003. With respect to claims 1, 4-11, 15, 16, 20-28, 33, 34 and 36, Appellants rely on the Declaration of the inventors under 37 C.F.R. § 1.131 filed March 19, 2007 (a copy of which is provided herewith in the Evidence Appendix), to establish a date of conception and reduction to practice prior to May 28, 2003, the filing date of the Cheng '762 reference. Based on the 37 C.F.R. § 1.131 Declaration of the inventors, Appellants antedate the filing date of Cheng '762. Accordingly, Cheng '762 is not prior art. Appellants respectfully request withdrawal of this rejection.

As discussed in Appellants' Amendment and Request for Continued Examination filed December 20, 2007, Appellants respectfully request reconsideration of the Declaration of the inventors under 37 C.F.R. § 1.131 filed previously. The Final Office Action asserts, at p. 6 that the declaration, as a whole, is defective and cannot overcome the Cheng '762 reference. Appellants respectfully disagree and submit that the Declaration does provide sufficient basis for withdrawal of the rejections based on Cheng '762.

Further, the Office Action asserts that "none of the exhibit [sic] show the reduced thickness at the interface, and the shaft (22) extends between the upper portion and the base." See Final Office Action at p. 6. Without acquiescing to this assertion, Appellants respectfully submit that none of independent claims 1, 20, or 38 recite these features.

Accordingly, Appellants respectfully submit that the evidence presented in the Declaration is sufficient to establish a date of conception and reduction to practice prior to May 28, 2003, the filing date of Cheng '762. Cheng '762 is therefore not valid as prior art against the present claims, and Appellants respectfully request withdrawal of these rejections.

2. Dependent Claims 4-11, 15, 16, 21-28, 33, 34, and 36

Claims 4-11, 15, 16, 21-28, 33, 34, and 36 depend from claims 1 and 20, respectively, and are allowable over the applied reference for at least the same reasons as discussed above with respect to claims 1 and 20.

B. Rejection of Claims 1, 6, 8-11, 15, 16, 18, 20-25, 33, and 34 Based on Cheng ‘362

1. Independent Claims 1 and 20

As discussed in Appellants’ Amendment and Request for Continued Examination filed December 20, 2007, independent claims 1 and 20 recite, among other features, “[a] golf bag comprising...a base secured to the second end of the body, the base *formed of a single piece element that extends substantially around the second end of the body.*” (Emphasis added). Cheng ‘362 fails to teach or suggest a base formed of a single piece element. The Final Office Action asserts, at p. 7, that the term “formed of a single piece” is broad and does not exclude the base made from a plurality of elements. Appellants respectfully disagree.

Cheng ‘362 describes a golf bag including a base seat. Col. 2, lines 43-45. The base seat includes a front section, a rear section and a pivot section connected between the front and rear sections. Col. 2, lines 65-67. Cheng ‘362 fails to teach or suggest a base *formed of a single piece* element extending substantially around the second end of the body. Rather, Chang ‘362 describes a multi-part base having a pivot section (40 in Figures 1-7) that is formed of a flexible material to facilitate bending of the base. Col. 3, lines 17-20. The pivot section is *connected between* the front and rear sections. Col. 2, lines 65-68. Further, Cheng describes the front and rear sections as “halves of the base seat and the pivot section is positioned at the center of the base seat.” *See* Cheng ‘362 col. 4, lines 21-23. Cheng further describes the base as having a pivot section “made by injection molding. The periphery of the pivot section 40 is bridged between the edges of the lateral side and bottom face of the adjacent open portions of the front and rear sections 20, 30 so as to *connect* the first and second receiving rooms 22, 32.” *See* col. 3, lines 11-15 (emphasis added). Cheng also describes the front and rear sections as able to be “*connected* by an alternative measure” rather than by the aforesaid pivot section. *Id* at col. 4, lines 8-11 (emphasis added). Therefore, Cheng ‘362 clearly fails to teach or suggest a base formed of a single piece element, as recited in independent claims 1 and 20.

The Final Office Action asserts, at p. 7, that “the specification uses the term ‘one piece element’ (pg. 5, para. 29) and sheds no light on the recitation ‘single piece collar’” and relies on U.S. Patent No. 5,501,328 to Keller et al. as describing a single piece collar. However, the term

“single piece collar” is not recited in the claims. Thus, Appellants submit that Keller has no bearing on the recited features of the claims.

For at least these reasons, Appellants respectfully submit that claims 1 and 20 are patentably distinct from Cheng ‘362.

2. Dependent Claims 6, 8-11, 15, 16, 18, 21-25, 33 and 34

Dependent claims 6, 8-11, 15, 16 and 18 that depend from claim 1, as well as claims 21-25, 33, and 34 that depend from claim 20, are allowable for at least the same reasons as discussed above with respect to their base claims

C. Rejection of Claims 1, 4-11, 15, 16, 18, 20-28, 33, 34, and 36 Based on Te-Pin

1. Independent Claims 1 and 20

As discussed above, independent claims 1 and 20 recite, among other features, a golf bag including a base, the base *formed of a single piece element that extends substantially around the second end of the body*. Appellants respectfully assert that Te-Pin fails to teach or suggest these features.

Te-Pin describes a golf bag that includes a base bracket. Col. 2, lines 48-49. The base bracket includes a front section, a rear section, a first flexible section disposed on the front section, a second flexible section disposed on the rear section and a connecting member connected between the first and second flexible sections. *See* Col. 2, lines 57-61 and FIGS. 1, 2, 4 and 5. The connecting member is disposed between the first and second flexible sections and is connected with outer edges of corresponding portions thereof. Col. 3, lines 33-35. A part of the connecting member is connected with the first and second flexible sections on the bottom of the base bracket, while another part is connected with the first and second flexible sections on the lateral side of the base seat. Col. 3, lines 35-40. The first and second sections are “connected together to form a larger receiving space.” Col. 3, lines 40-41.

Clearly, Te-Pin fails to teach or suggest a base formed of a single piece element that extends substantially around the second end of the body. In fact, Te-Pin describes a base

including multiple parts connected together. For instance, the connecting member of Te-Pin is “bridged and connected between the first and second flexible sections by way of stitching.” Col. 4, lines 15-17. Note also Figs. 2, 4 and 5 of Te-Pin. As such, Te-Pin specifically teaches away from a base formed of a single piece element that extends substantially around the second end of the body, as recited in claims 1 and 20. Appellants respectfully submit that independent claims 1 and 20 patentably distinguish from Te-Pin and request withdrawal of this rejection.

2. *Dependent Claims 4-11, 15, 16, 18, 21-28, 33, 34 and 36*

Claims 4-11, 15, 16 and 18 that depend from claim 1, as well as claims 21-28, 33, 34 and 36 that depend from claim 20, are allowable for at least the same reasons as discussed above with respect to their base claims.

D. *Rejection of Claims 2, 29, 30, 38, 40-43, 46 and 47 Based on Cheng ‘762, Cheng ‘362, or Te-Pin in view of Kang*

1. *Dependent Claims 2, 29 and 30*

Claims 2 and 29-30 depend from claims 1 and 20, respectively. As discussed above, none of the Cheng references or Te-Pin teaches or suggests the features of claims 1 and 20. The addition of Kang fails to cure the deficiencies of the Cheng references or the Te-Pin reference with respect to claims 1 and 20. Accordingly, Appellants respectfully submit that claims 2, 29 and 30 are allowable for at least the same reasons as their respective base claims and further in view of the novel features recited therein.

2. *Independent Claim 38*

Independent claim 38 recites features similar to those recited in claims 1 and 20. For example, claim 38 recites, among other features, “[a] golf bag comprising: ...a base secured to the second end of the body, the base *formed of a single piece* element that extends substantially around the second end of the body” (Emphasis added). None of Cheng ‘762, Cheng ‘362, or Te-Pin teaches or suggests the features of claim 38. The addition of Kang fails to cure the deficiencies of these references with respect to claim 38 because Kang, alone or in combination with the other cited references, fails to teach or suggest the base formed of a single piece

element. Accordingly, Appellants respectfully submit that claim 38 is allowable over the cited references.

3. Dependent Claims 40-43, 46 and 47

Claims 40-43, 46 and 47 depend from claim 38 are allowable for at least the same reasons at discussed above with respect to their base claims.

E. Rejection of Claims 12-14, 31, 32, 35-37, 44, and 45 Based on Cheng '762, Cheng '362, or Te-Pin in view of Wen-Chien

Claims 12-14 that depend from claim 1, as well as claims 31, 32 and 35-37 that depend from claim 20, and claims 44 and 45 that depend from claim 38, are allowable for at least the same reasons described above with respect to their respective base claims. The addition of Wen-Chien fails to cure the deficiencies of the Cheng references and Te-Pin with respect to independent claims 1, 20 and 38. Accordingly, Appellants respectfully submit that dependent claims 12-14, 31, 32, 35-37, 44 and 45 are allowable over the cited combination of references.

F. Rejection of Claims 17-19 Based on Cheng '762, Cheng '362, or Te-Pin in view of Yoshida

Claims 17-19 depend from claim 1. The addition of Yoshida fails to cure the deficiencies of the Cheng references or Te-Pin with respect to claim 1. For instance, Yoshida fails to teach or suggest a base formed of a single piece element that extends substantially around the second end of the body. Accordingly, Appellants submit that claims 17-19 are allowable for at least the same reasons as their base claim and further in view of the novel and non-obvious features recited therein.

G. Rejection of Claims 48-55 Based on Cheng '762, Cheng '362, or Te-Pin in view of Wen-Chien and Kang

1. Independent Claim 48

As discussed in Applicants' Amendment and Request for Continued Examination filed December 20, 2007, independent claim 48 recites, among other features, a golf bag comprising:

a base secured to an end of the body, the base having a foam element formed of a polymer foam material, and the base having at least a first wear element and a second wear element secured to an exterior surface of the foam element, wherein the *first wear element has a first configuration and the second wear element has a second configuration, the second configuration being different from the first configuration* and wherein at least one of the first and second wear elements is configured to contact a ground.

None of the Cheng references or Te-Pin teaches or suggests the features of claim 48. For example, none of the Cheng references or Te-Pin teaches or suggests at least a first and second wear element. The addition of Wen-Chien and Kang fails to cure the deficiencies of the Cheng references or Te-Pin with respect to claim 48. None of the cited references, alone or in combination, teaches or suggests a first wear element and a second wear element having different configurations. Accordingly, Applicants respectfully submit that claim 48 is allowable over the cited combination of references.

2. Dependent Claims 49-55

Claims 49-55 depend from claim 48 and are allowable for at least the same reasons as discussed above with respect to claim 48.

CONCLUSION

For all of the foregoing reasons, Appellant respectfully submits that the final rejection of claims 1, 2, 4-38 and 40-55 is improper and should be reversed.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: May 6, 2010

By: /Elizabeth A. Almeter/
Elizabeth A. Almeter
Registration No. 57,019

1100 13th Street, N.W., Suite 1200
Washington, D.C. 20005-4051
Tel: (202) 824-3000
Fax: (202) 824-3001

CLAIMS APPENDIX
37 C.F.R. § 41.37(c)(1)(viii)

Claims involved in the appeal:

1. (Previously Presented) A golf bag comprising:

a substantially hollow body with a first end for receiving golf equipment and an opposite second end; and

a base secured to the second end of the body, the base formed of a single piece element that extends substantially around the second end of the body and forms a support surface for contacting a ground, and the base defining a flexion line, a first portion of the base being pivotable with respect to a second portion of the base about the flexion line.

2. (Original) The golf bag recited in claim 1, wherein the base is formed of a polymer foam material.

4. (Original) The golf bag recited in claim 1, wherein the flexion line is an indentation in the base.

5. (Original) The golf bag recited in claim 4, wherein the indentation is defined in an interior surface of the base.

6. (Original) The golf bag recited in claim 4, wherein sidewalls of the base have a reduced thickness in areas positioned at an interface of the first portion and the second portion of the base.

7. (Previously Presented) The golf bag recited in claim 4, wherein the support surface of the base has a reduced thickness in areas positioned at the interface of the first portion and the second portion of the base.
8. (Original) The golf bag recited in claim 1, further including a support assembly that includes a pair of legs for supporting the golf bag in an inclined position.
9. (Original) The golf bag recited in claim 8, wherein the first portion is pivoted with respect to the second portion when the golf bag is in the inclined position.
10. (Original) The golf bag recited in claim 8, wherein the support assembly includes an actuator that extends between the legs and the base.
11. (Original) The golf bag recited in claim 10, wherein the actuator joins with a first connecting element that is secured to the base.
12. (Original) The golf bag recited in claim 1, wherein at least one wear element is secured to an exterior surface of the base.
13. (Previously Presented) The golf bag recited in claim 12, wherein the at least one wear element includes a first wear element and a second wear element that are positioned on opposite sides of the base.

14. (Original) The golf bag recited in claim 12, wherein the wear element is formed from a rubber material.

15. (Original) The golf bag recited in claim 1, wherein a shaft extends between an upper portion of the golf bag and the base.

16. (Original) The golf bag recited in claim 15, wherein the shaft joins with a second connecting element that is secured to the base.

17. (Original) The golf bag recited in claim 15, wherein the shaft includes a curved area positioned proximal the first end of the body, the curved area forming a handle.

18. (Original) The golf bag recited in claim 15, wherein the shaft includes a curved area positioned proximal the second end of the body.

19. (Original) The golf bag recited in claim 18, wherein the curved area extends into material elements forming the body to support a shape of the material elements.

20. (Previously Presented) A golf bag configurable to stand in an upright position or an inclined position, the golf bag comprising:

a substantially hollow body with a first end for receiving golf equipment and an opposite second end;

a base secured to the second end of the body, the base formed of a single piece element that extends substantially around the second end of the body and forms a support surface for contacting a ground, the base being formed of a flexible material such that a first portion of the base is pivotable with respect to a second portion of the base; and

a support assembly secured to the body and the base, the support assembly including a pair of legs for supporting the golf bag in the inclined position.

21. (Original) The golf bag recited in claim 20, wherein the base is in an unflexed configuration and the legs are adjacent to the body when the golf bag is in the upright position, and the first portion is pivoted with respect to the second portion and the legs extend obliquely away from the body when the golf bag is in the inclined position.

22. (Original) The golf bag recited in claim 20, wherein the support assembly includes an actuator that extends between the legs and the base.

23. (Original) The golf bag recited in claim 22, wherein the actuator joins with a first connecting element that is secured to the base.

24. (Original) The golf bag recited in claim 20, wherein the base defines a flexion line, the first portion of the base being pivotable about the flexion line.

25. (Original) The golf bag recited in claim 24, wherein sidewalls of the base have a reduced thickness in areas positioned at an interface of the first portion and the second portion of the base.
26. (Previously Presented) The golf bag recited in claim 24, wherein the support surface of the base has a reduced thickness in areas positioned at the interface of the first portion and the second portion of the base.
27. (Original) The golf bag recited in claim 20, wherein the flexion line is an indentation in the base.
28. (Original) The golf bag recited in claim 27, wherein the indentation is defined in an interior surface of the base.
29. (Original) The golf bag recited in claim 20, wherein the base is formed of a polymer foam material.
30. (Original) The golf bag recited in claim 20, wherein the base is formed of an ethylvinylacetate foam material.
31. (Original) The golf bag recited in claim 20, wherein at least one wear element is secured to an exterior surface of the base.

32. (Original) The golf bag recited in claim 31, wherein the wear element is formed from a rubber material.

33. (Original) The golf bag recited in claim 20, wherein a shaft extends between an upper portion of the golf bag and the base.

34. (Original) The golf bag recited in claim 33, wherein the shaft joins with a second connecting element that is secured to the base.

35. (Original) The golf bag recited in claim 33, wherein the shaft includes a first curved area positioned proximal the first end of the body, the curved area forming a handle.

36. (Original) The golf bag recited in claim 35, wherein the shaft includes a second curved area positioned proximal the second end of the body.

37. (Original) The golf bag recited in claim 36, wherein the second curved area extends into material elements forming the body to support a shape of the material elements.

38. (Previously Presented) A golf bag comprising:

a substantially hollow body with a first end for receiving golf equipment and an opposite second end; and

a base secured to the second end of the body, the base formed of a single piece element that extends substantially around the second end of the body and forms a support surface for contacting a ground, and the base being formed of a flexible polymer foam material, a first portion of the base being pivotable with respect to a second portion of the base about a flexion line.

40. (Previously Presented) The golf bag recited in claim 38, wherein the flexion line is an indentation in the base.

41. (Original) The golf bag recited in claim 40, wherein the indentation is defined in an interior surface of the base.

42. (Original) The golf bag recited in claim 38, further including a support assembly secured to the body and the base, the support assembly including a pair of legs for supporting the golf bag in an inclined position.

43. (Original) The golf bag recited in claim 38, wherein the polymer foam material is an ethylvinylacetate foam.

44. (Original) The golf bag recited in claim 38, wherein at least one wear element is secured to an exterior surface of the base.

45. (Original) The golf bag recited in claim 44, wherein the wear element is formed from a rubber material.

46. (Original) The golf bag recited in claim 38, wherein sidewalls of the base have a reduced thickness in areas positioned at an interface of the first portion and the second portion of the base.

47. (Previously Presented) The golf bag recited in claim 38, wherein the support surface of the base has a reduced thickness in areas positioned at the interface of the first portion and the second portion of the base.

48. (Previously Presented) A golf bag comprising:

a substantially hollow body for receiving golf equipment; and

a base secured to an end of the body, the base having a foam element formed of a polymer foam material, and the base having at least a first wear element and a second wear element secured to an exterior surface of the foam element, wherein the first wear element has a first configuration and the second wear element has a second configuration different from the first configuration and wherein at least one of the first and second wear elements is configured to contact a ground.

49. (Original) The golf bag recited in claim 48, wherein the foam element is flexible, and a first portion of the foam element is pivotable with respect to a second portion of the foam element.

50. (Original) The golf bag recited in claim 49, wherein an indentation in the foam element forms a flexion line for pivoting of the first portion with respect to the second portion.

51. (Original) The golf bag recited in claim 49, wherein sidewalls of the base have a reduced thickness in areas positioned at an interface of the first portion and the second portion of the base.

52. (Original) The golf bag recited in claim 49, wherein a support surface of the base has a reduced thickness in areas positioned at an interface of the first portion and the second portion of the base.

53. (Original) The golf bag recited in claim 48, further including a support assembly that includes a pair of legs for supporting the golf bag in an inclined position.

54. (Original) The golf bag recited in claim 48, wherein the polymer foam material is selected from a group consisting of ethylvinylacetate and polyurethane foam.

55. (Original) The golf bag recited in claim 48, wherein the at least one of the first wear element and the second wear element is formed from a rubber material.

Derek CAMPBELL *et al.*
Serial No. 10/700,043
Appeal Brief

EVIDENCE APPENDIX
37 C.F.R. § 41.37(c)(1)(ix)

Declaration Under 37 CFR § 1.131 Filed March 19, 2007

Declaration under 37 C.F.R. § 1.131
Appended to Amendment
Reply to Office Action of September 19, 2006
Page 1 of 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Atty. Docket No.: 005127.00179
Derek Campbell et al.	
Serial No.: 10/700,043	Group Art Unit: 3727
Filed: November 4, 2003	Examiner: Mai, Tri M
For: GOLF BAG BASE	Confirmation No.: 3120

DECLARATION UNDER 37 C.F.R. § 1.131

U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

We, Derek Campbell, Christopher Pearson and Randy Wolfe, hereby declare as follows:

- 1) We are named as joint inventors of the above-identified patent application.
- 2) We were employed by NIKE, Inc. (NIKE) or a contract firm employed by NIKE during conception, development and reduction to practice of the inventions set forth in the above-identified patent application.
- 3) NIKE is the assignee of the above-identified application.
- 4) Prior to May 28, 2003, the filing date of U.S. Patent No. 6,938,762, we conceived and reduced to practice the invention recited in at least pending claims 1, 4-11, 15, 16, 20-28, 33, 34 and 36 of the above-identified application.
- 5) Reduction to practice is evidenced by the design and construction of a golf bag having a golf bag base constructed according to aspects of the above-identified application. A golf bag having a golf bag base described in the above-identified application is shown in the attached figures, Exhibits A-G.
- 6) Exhibit A demonstrates conception and reduction to practice of at least independent claims 1 and 20 prior to May 28, 2003 as discussed below. The golf bag (10) shown in Exhibit A and the accompanying annotated figure, includes a substantially hollow body (12) with a

first end (14) for receiving golf equipment and an opposite second end (16). In addition, the golf bag (10) includes a base (18) secured to the second end (16) of the body. The base (18) includes a one-piece element that extends substantially around the body (12) and forms a support surface for contacting a ground. The base (18) defines a flexion line (20). Exhibit A further illustrates that a first portion (18A) of the base (18) is pivotable with respect to a second portion (18B) of the base (18) about the flexion line (20). Exhibit A further illustrates the base (18) being formed of a flexible material because the illustrated base (18) is substantially horizontal in portions of Exhibit A and is shown as flexed in other portions. Exhibit A includes a date (redacted) that is prior to May 28, 2003.

- 7) Conception and/or reduction to practice of at least claims 4-11, 15, 16, 21-28, 33, 34 and 36 is apparent from Exhibits A-G. All of Exhibits A-G include dates thereon that are prior to May 28, 2003 (the dates are redacted in the Exhibits). At least Exhibits A, C, D, F and G clearly illustrate the flexion line (20) as an indentation in the base, as recited in claims 4 and 27, and that the indentation is defined in an interior surface of the base, as recited in claims 5, 28. In yet another example, Exhibit A clearly illustrates the first portion of the base (18A) being pivoted with respect to the second portion of the base (18B) when the golf bag is in an inclined position (as recited in claim 9). In still another example, Exhibit A clearly illustrates that the base (18) is in an unflexed configuration and the legs (22) are adjacent to the body (12) when the golf bag (10) is in the upright position, and the first portion (18A) is pivoted with respect to the second portion (18B) and the legs (22) extend obliquely away from the body (12) when the golf bag is in the inclined position (as recited in claim 21).
- 8) Exhibits A-G clearly illustrate the base defining the flexion line (20) and the first portion (18A) of the base being pivotable about the flexion line (20), as recited in claim 24. The Exhibits further illustrate the sidewalls of the base (18) having a reduced thickness in areas positioned at an interface of the first portion (18A) and the second portion (18B) of the base (as recited in claims 6 and 25). The Exhibits further illustrate the support surface of the base having a reduced thickness in areas positioned at an interface of the first portion (18A) and the second portion (18B), as recited in claims 7 and 26.
- 9) Exhibit A clearly illustrates the golf bag (10) including a support assembly (22) that includes a pair of legs for supporting the golf bag in an inclined position, as recited in claim

Declaration under 37 C.F.R. § 1.131
Appended to Amendment
Reply to Office Action of September 19, 2006
Page 3 of 3

8. Exhibit A further illustrates the support assembly (22) including an actuator (23) that extends between the legs and the base, as recited in claims 10 and 22, and that the actuator (23) joins with a first connecting element (24) that is secured to the base, as recited in claims 11 and 23.
- 10) The figures from the prototype depicted in Exhibits A-G have not been altered since they were originally prepared (other than redacting the original dates by counsel, as indicated above). In addition, each of Exhibits A-G includes a duplicate figure including annotations indicating various features of the golf bag.
- 11) Each of us individually represents that we are over 18 years of age and of competent mind.
- 12) All statements made of our own knowledge are true and all statements made on information and belief are believed to be true; and further, these statements were made with the knowledge that willful, false statement so made are punishable by fine or imprisonment or both, under 18 U.S.C. § 1001 and that such willful, false statements may jeopardize the validity of the above-identified application or any patent issuing thereon.

Respectfully submitted,



Derek Campbell

3/13/07

Date

Christopher Pearson

Date

Randy Wolfe

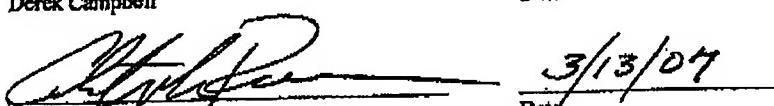
Date

Declaration under 37 C.F.R. § 1.131
Appended to Amendment
Reply to Office Action of September 19, 2006
Page 3 of 3

8. Exhibit A further illustrates the support assembly (22) including an actuator (23) that extends between the legs and the base, as recited in claims 10 and 22, and that the actuator (23) joins with a first connecting element (24) that is secured to the base, as recited in claims 11 and 23.
- 10) The figures from the prototype depicted in Exhibits A-G have not been altered since they were originally prepared (other than redacting the original dates by counsel, as indicated above). In addition, each of Exhibits A-G includes a duplicate figure including annotations indicating various features of the golf bag.
- 11) Each of us individually represents that we are over 18 years of age and of competent mind.
- 12) All statements made of our own knowledge are true and all statements made on information and belief are believed to be true; and further, these statements were made with the knowledge that willful, false statements so made are punishable by fine or imprisonment or both, under 18 U.S.C. § 1001 and that such willful, false statements may jeopardize the validity of the above-identified application or any patent issuing thereon.

Respectfully submitted,

Derek Campbell _____ Date _____

Christopher Pearson _____ Date _____


Randy Wolfe _____ Date _____

Declaration under 37 C.F.R. § 1.131
Appended to Amendment
Reply to Office Action of September 19, 2006
Page 3 of 3

8. Exhibit A further illustrates the support assembly (22) including an actuator (23) that extends between the legs and the base, as recited in claims 10 and 22, and that the actuator (23) joins with a first connecting element (24) that is secured to the base, as recited in claims 11 and 23.
- 10) The figures from the prototype depicted in Exhibits A-G have not been altered since they were originally prepared (other than redacting the original dates by counsel, as indicated above). In addition, each of Exhibits A-G includes a duplicate figure including annotations indicating various features of the golf bag.
- 11) Each of us individually represents that we are over 18 years of age and of competent mind.
- 12) All statements made of our own knowledge are true and all statements made on information and belief are believed to be true; and further, these statements were made with the knowledge that willful, false statement so made are punishable by fine or imprisonment or both, under 18 U.S.C. § 1001 and that such willful, false statements may jeopardize the validity of the above-identified application or any patent issuing thereon.

Respectfully submitted,

Derek Campbell

Date

Christopher Pearson

Date

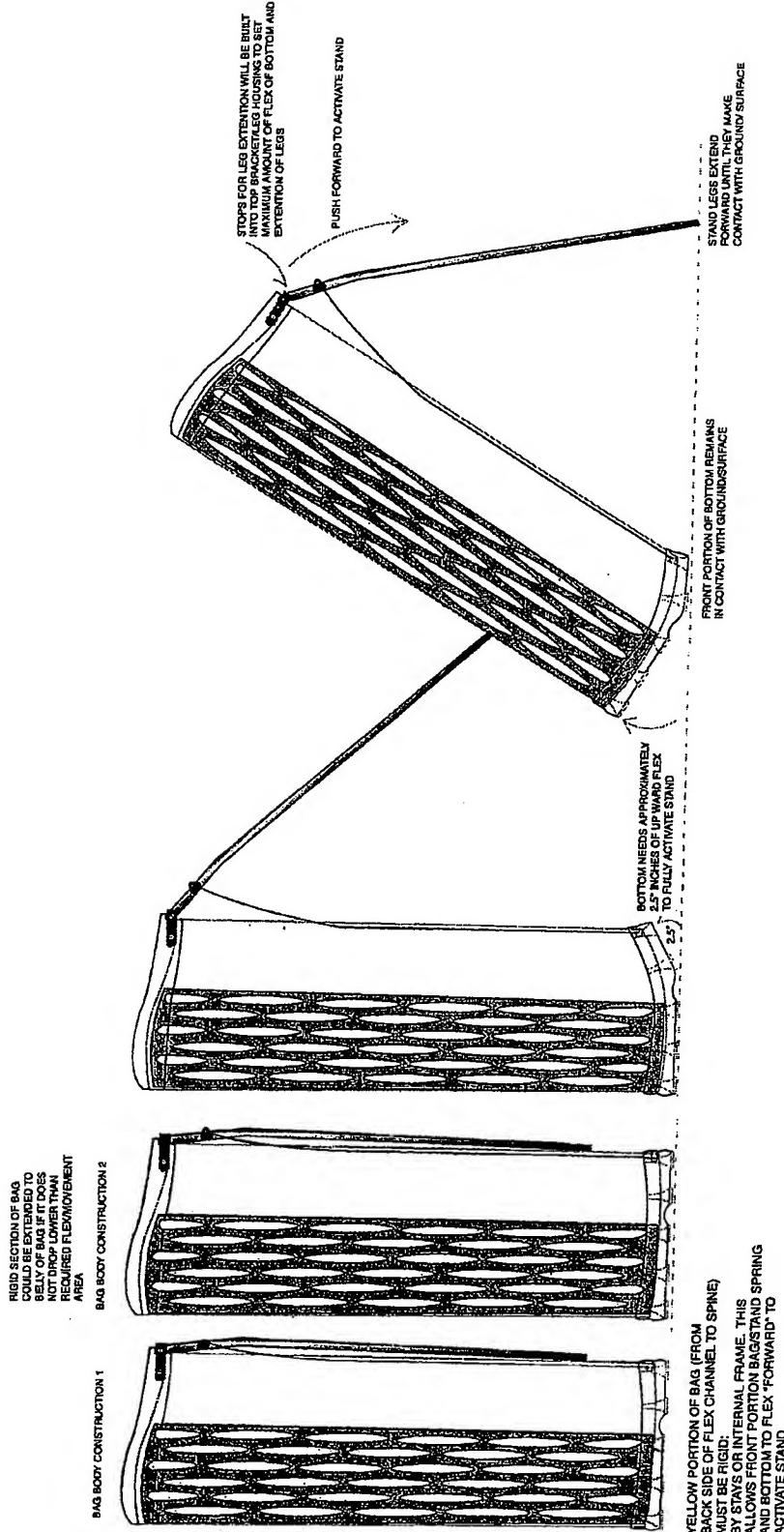
Randy Wolfe

Date

Mar. 19, 2007

Exhibit A

ADDITIONAL INFORMATION FOR ADVANCED NIKE TOUR CARRY BOTTOM
C. PEARSON, SUMMITOP INDUSTRIAL CO. LTD.



ADDITIONAL INFORMATION FOR ADVANCED NIKE TOUR CARRY BOTTOM
C. PEARSON, SUMMITOP INDUSTRIAL CO., LTD.

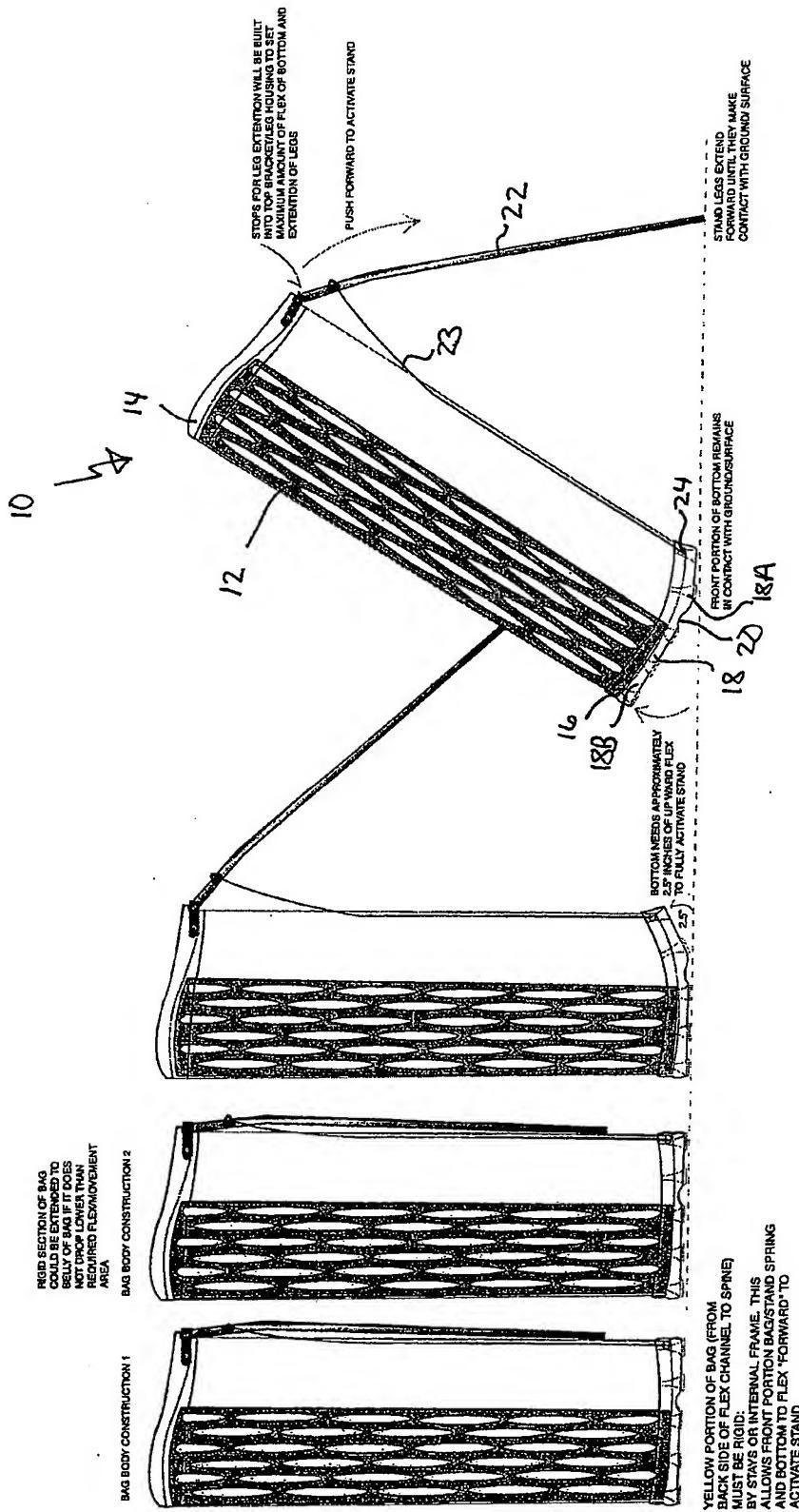


Exhibit B

**NIKE ADVANCED CONCEPT EVA BOTTOM
TAC BOTTOM CUT-AWAY
WITH EVA FOAM.
C.PEARSON**

10mm

**Stitch bag body like
normal.**

■ 3mm EVA softer density
foam side wall sheet to
fill in holes on side wall.
This foam should just be a
thin strip adheared to the
side wall.

■ 5mm EVA Sheet to cover entire
bottom/ Total thickness of sex
area is 5mm.

■ 5mm EVA sheet adheared to front and
back section (not the sex area)

**NIKE ADVANCED CONCERT EVA BOTTOM
TAC BOTTOM CUT AWAY
WITH EVA FOAM.**

C.PEARSON

10mm

Stitch bag body like
normal.

18A

■ 3mm EVA softer density
foam side wall sheet to
fill in holes on side wall.
This foam should just be a
thin strip attached to the
side wall.

20

■ 5mm EVA sheet to cover entire
bottom/ Total thickness of sex
area is 5mm

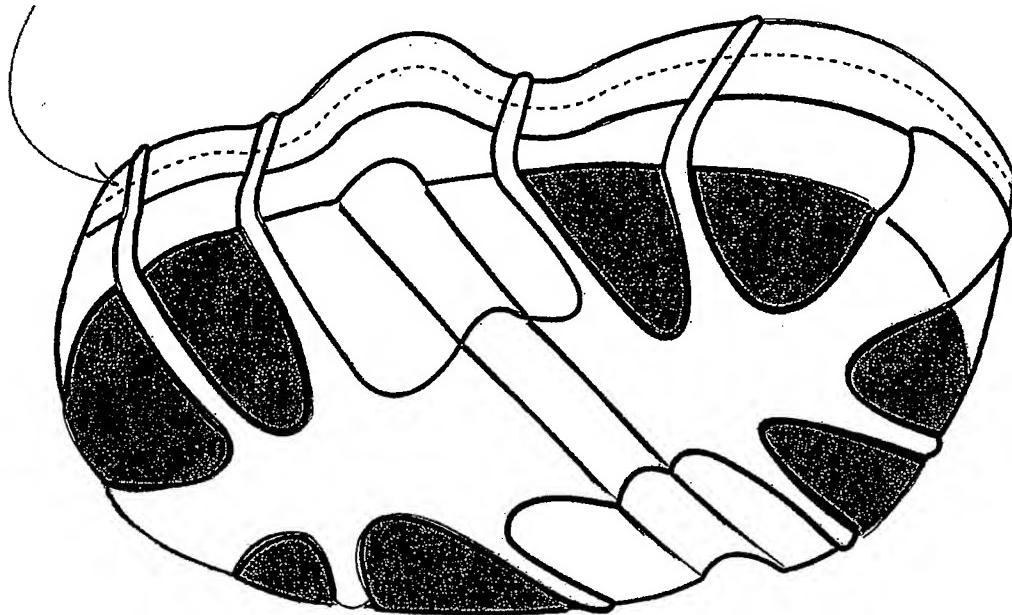
18B

■ 5mm EVA sheet added to front and
back section (not the sex area).

Exhibit C

NIKE ADVANCED CONCEPT TOUR CARRY BOTTOM:
C.PEARSON. SUMMITOP INDUSTRIAL CO. LTD [REDACTED]

BAG BODY INTO CHANNEL/SEW THROUGH BOTTOM/BAG TO ATTACH



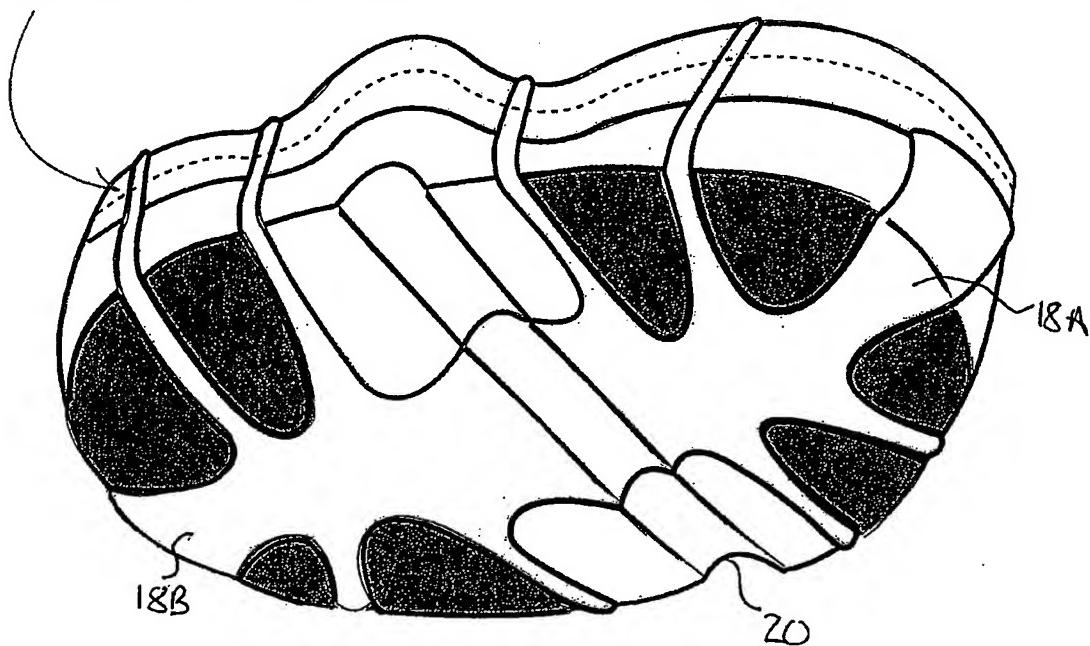
PHYLON SHELL

STABILITY WEB: MATERIAL SIMILAR TO TOE GUARD ON MY PRESTO SHOES (CLEAR ON SHOES)

DURABLE INSERTS (RUBBER OR HARDER PHYLON) FOR ABRASION PROTECTION IF NEEDED

NIKE ADVANCED CONCEPT TOUR CARRY BOTTOM:
C.PEARSON. SUMMITOP INDUSTRIAL CO. LTD [REDACTED]

BAG BODY INTO CHANNEL/SEW THROUGH BOTTOM/BAG TO ATTACH



PHYLON SHELL



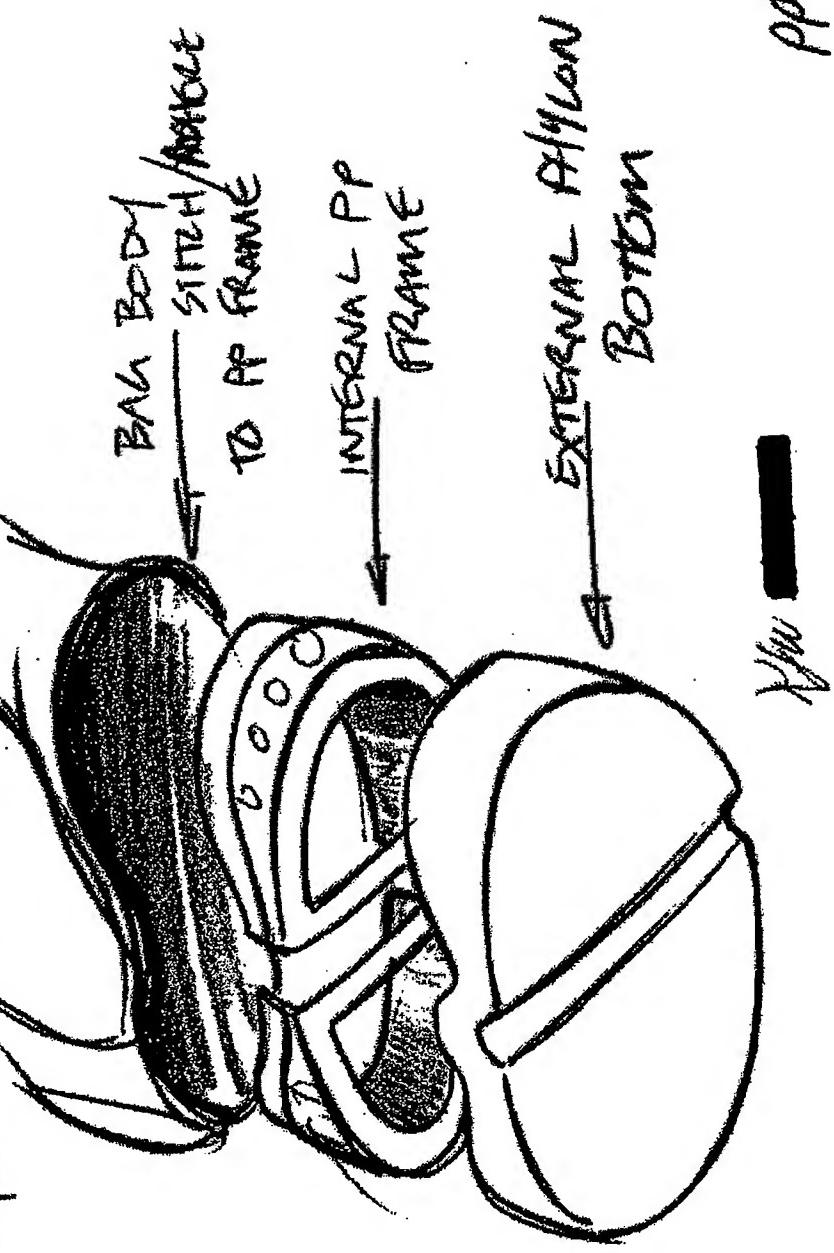
STABILITY WEB: MATERIAL SIMILAR TO TOE GUARD ON MY PRESTO SHOES (CLEAR ON SHOES)



DURABLE INSERTS (RUBBER OR HARDER PHYLON) FOR ABRASION PROTECTION IF NEEDED

Exhibit D

New tank uses Bottom
plenum as main material -



New task inner bottom
polymer as main material

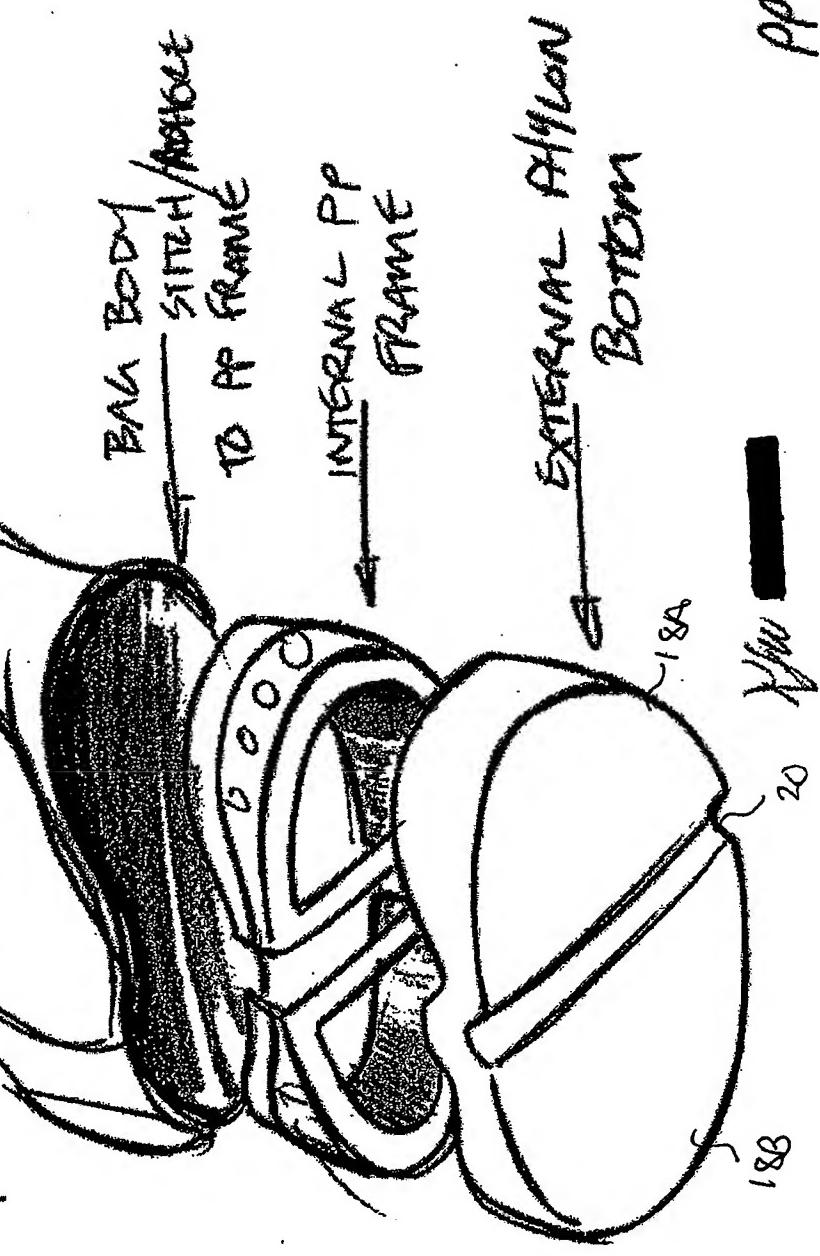
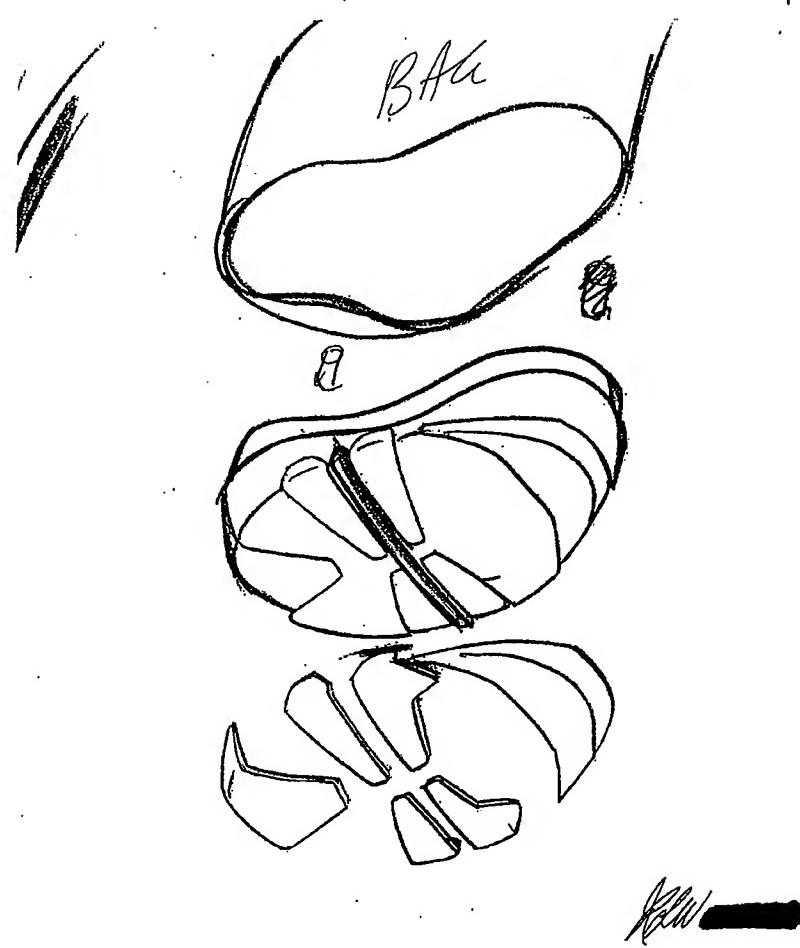


Exhibit E



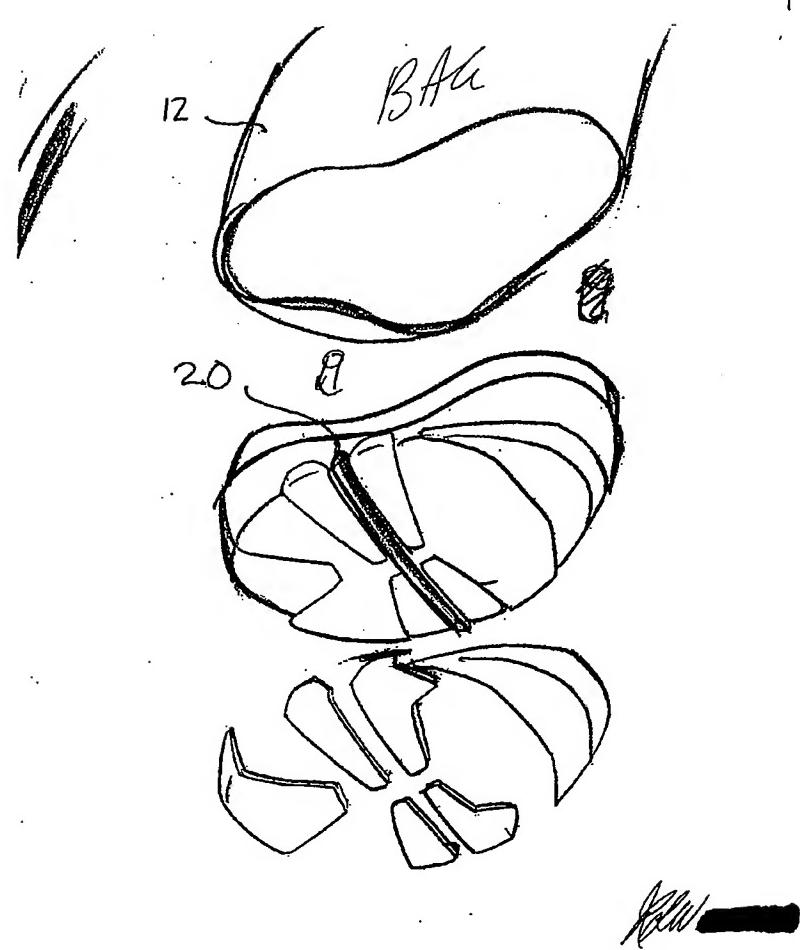
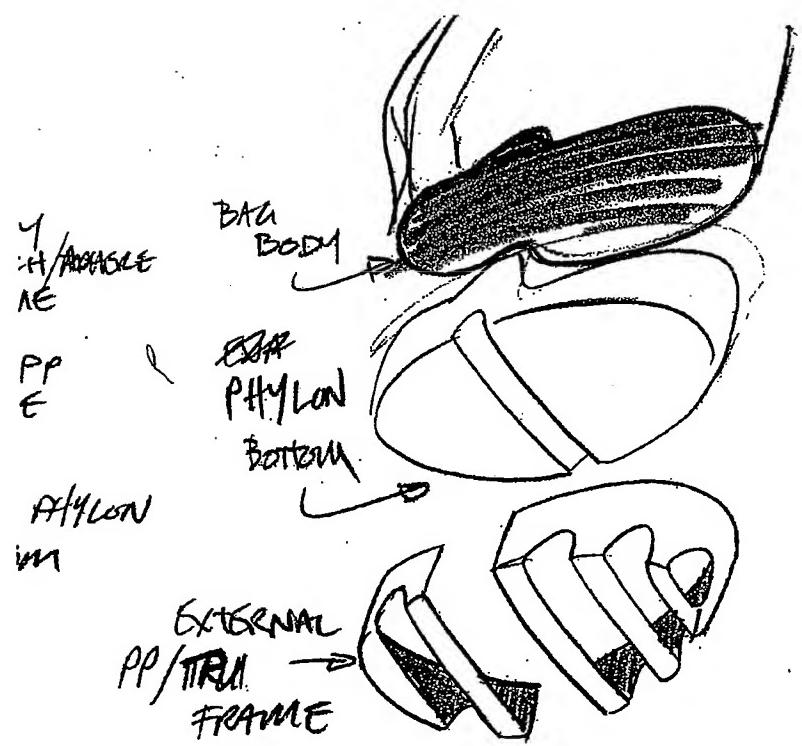
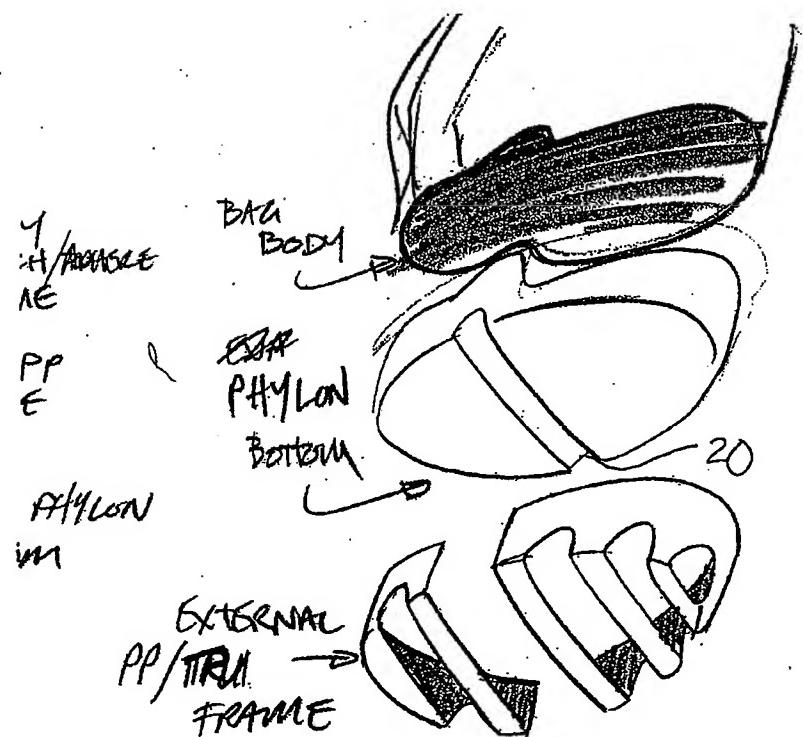


Exhibit F

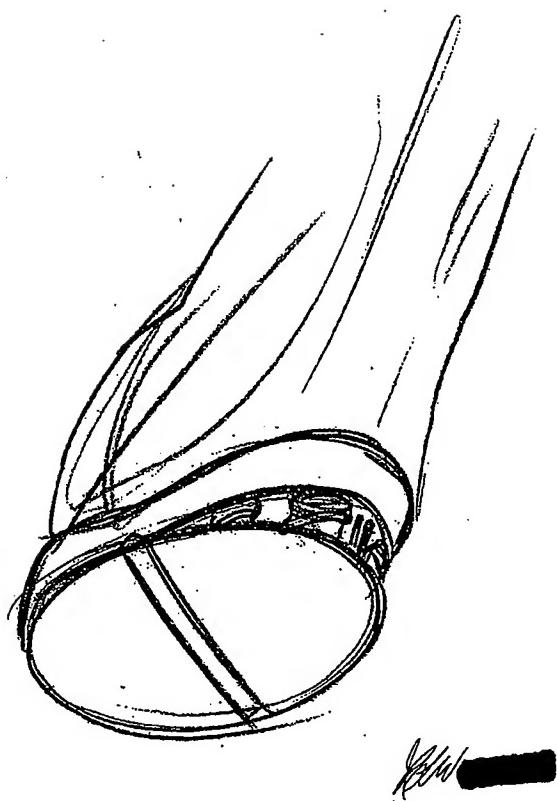


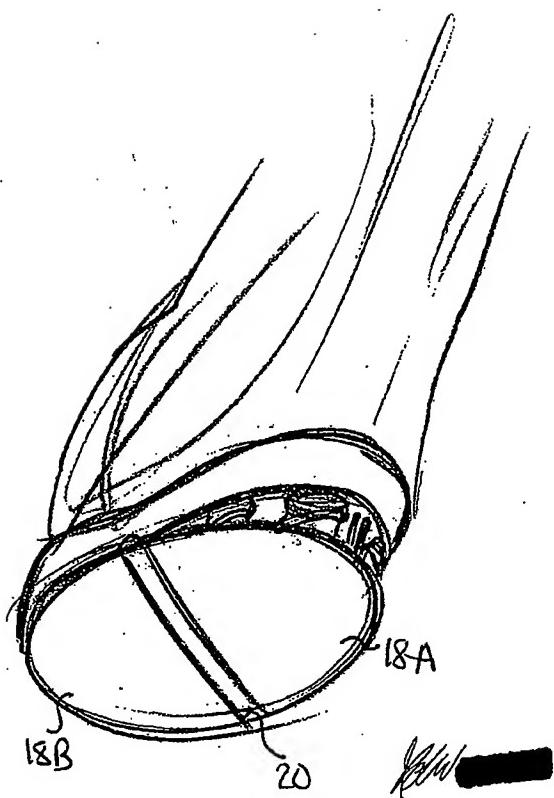
RW [redacted]



KGW [redacted]

Exhibit G





RELATED PROCEEDINGS APPENDIX
37 C.F.R. § 41.37(c)(1)(x)

NONE.